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CONSTITUTIONAL PROVISIONS AND STATUTES CITED (CONT'D)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

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BRIEF FOR APPELLEE KENTWOOD PUBLIC SCHOOLS

QUESTIONS PRESENTED

1. Does the Michigan statute which provides for the selection of members of the county (intermediate) board of education by vote of a body composed of one member of the board of education of each constituent school district (whose members are popularly elected by school electors), deny the equal protection of the laws to the individual appellants, where neither the Michigan Constitution nor any state statute grants them the absolute right to vote for members of the county (intermediate) board of education?

2. Should the transfer of territory to appellee Kentwood Public Schools stand as the act of a de facto body, if the Court holds that Michigan county (intermediate) boards of education are malapportioned?

3. Does appellant The Board of Education of the City of Grand Rapids, as a municipal corporation, have privileges or immunities under the federal Constitution which it may invoke against its creator?

STATEMENT OF THE CASE

[This statement is abstracted from the stipulation of facts in the Transcript of Record, pages 121 through 194]

Appellee Kentwood Public Schools was created July 1, 1958, by the consolidation of 6 elementary school districts, to provide kindergarten through 12th grade education (R. 123, 124).

Prior to the political annexation and transfer of territory, which triggered this litigation, there had been 9 detachments of territory from Kentwood Public Schools by political annexations to the City of Grand Rapids under the Home Rule Act (§ 6, Act No. 279 of the Public Acts of 1909, as amended; 1948 Compiled Laws of Michigan, § 117.6; Michigan Statutes Annotated, § 5.2085), which territory, so politically annexed, became a part of appellant school district, without a vote of the school electors of appellee Kentwood Public Schools, by virtue of § 143 of The School Code of 1955 (CL 1948, § 340.143; MSA § 15.3143) which provided:

> "Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city."

From 1958 through December 31, 1962, there were 35 political annexations of territory to the City of Grand Rapids, which territory became a part of appellant school district, by operation of law (R. 124).

The 4 areas involved in this litigation comprised territory which became part of the Kentwood school district on consolidation July 1, 1958. These 4 areas, with a 1964 state equalized valuation for tax purposes of $5,370,000 [1966, $6,585,729], and upon which stands a modern, 14-classroom elementary school, were politically annexed to the City of Grand Rapids under the Home Rule Act, effective December 31, 1962 (R. 123, 134).

The 1962 Michigan Legislature repealed § 143. of The School Code by Act No. 171 PA 1962, and the act was approved by the Governor May 17, 1962. However, as the act was not given immediate effect, it did not take effect until March 28, 1963 (R. 125).

Because the repeal of § 143 did not save these 4 areas from becoming a part of appellant The Board of Education of the City of Grand Rapids, the Board of Education of Kentwood Public Schools on January 1, 1963, by proper resolutions, requested appellee the Board of Education of the County of Kent to transfer these 4 areas back to Kentwood Public Schools, under the transfer provisions of chapter 5, part 2, of The School Code (CL 1948, § 340.461, et seq; MSA § 15.3461, et seq), extracts from which are set forth in Appendix A (R. 126, 127).

Appellee the Kent County Board of Education held extensive hearings on the request and, at the final hearing February 6, 1963, it was publicly announced by the president of the county board of education that a decision would be rendered February 25, 1963 (R. 127, 128).

February 15, 1963, appellants James Sailors and Loretta Sailors, Seymour Koning and Mildred Koning, Grazzi Mullay and Rosalie Mullay, the original individual plaintiffs, and appellant The Board of Education of the City of Grand Rapids filed the complaint herein seeking to enjoin the county board of education from acting on the requested transfer, to declare the county board unconstitutionally constituted, to enjoin further elections until the malapportionment was brought into balance, and to declare the absence of any statutory standards governing the decisions of the county board violative of due process and an improper delegation of legislative authority. On filing the complaint Chief District Judge W. Wallace Kent entered an ex parte order restraining the county board from assuming jurisdiction of the requested tranfer and from rendering a decision thereon (R. 128, 129).

In the afternoon of February 25, 1963, on motion of Kentwood Public Schools, Judge Kent revoked the temporary restraining order, without prejudice to renew. That evening the county board adopted a resolution transferring

the 4 areas from appellant The Board of Education of the City of Grand Rapids to appellee Kentwood Public Schools (R. 129). The complaint was then amended to set aside the transfer.

A three-judge court was constituted to hear appellants' complaint and by order entered March 4, 1963, denied the motion of appellants to reinstate the restraining order and likewise denied their application for an interlocutory injunction at that time. Appellees' motions to dismiss the complaint were held in abeyance and the Court retained its jurisdiction "awaiting the plaintiffs' exercise of their administrative remedies provided by the Michigan Statutes, and, if they so choose, their application to the Supreme Court of Michigan for writ of certiorari to review the action of the state board of education" (R. 133).

Appellants (the original plaintiffs) appealed the order of transfer to the State Board of Education, pursuant to § 467 of The School Code of 1955, as amended (CL 1948, § 340.467; MSA § 15.3467), which section is set forth in Appendix A, *infra*, pp. 1a-2a (R. 133).

The State Board of Education, which has never been made a party to this litigation, was constituted by § 6, Article XI of the 1908 Constitution, the 4 members of which were elected at large by the people of the State (R. 133, 134). This section is set forth in Appendix E, *infra*, pp. 15a-16a.

June 5, 1963, the State Board of Education entered an order setting aside the action of appellee the Board of Education of the County of Kent taken February 25, 1963, and ordered that the territory involved be transferred from appellant The Board of Education of the City of Grand Rapids to appellee Kentwood Public Schools, except for the property owned and occupied by the original individual plaintiffs, appellants James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay and two other lots owned by others (R. 134). For the full text of the order see R. 167-172.

Application to the Supreme Court of Michigan for leave to appeal the order of the State Board of Education was

not made and the order of the State Board of Education has become final (R. 134, 135).

Appellants William A. Duthler and Anna M. Duthler; Harvey A. Duthler and Edna Duthler intervened as parties plaintiff by order entered June 4, 1964 (R. 135). These appellants are school electors of Kentwood Public Schools (R. 135). The original individual plaintiffs, James Sailors and Loretta Sailors; Seymour Koning and Mildred Koning; Grazzi Mullay and Rosalie Mullay, are school electors of appellant school district and not of Kentwood, by reason of the order of the State Board of Education (R. 134).

Since February 25, 1963, when the ex parte temporary restraining order was revoked (R. 129) and appellee The Board of Education of the County of Kent ordered the transfer of the 4 areas (R. 129), appellee has exercised the powers and performed the duties granted and imposed on it by § 297 of The school code of 1955, as amended (R. 136, see Appendix B, *infra*, pp. 3a-6a) and since March 28, 1963, appellee, now known as the Board of Education of the Kent Intermediate School District (R. 121), has exercised the powers and performed the duties granted and imposed on it by § 298a of The school code of 1955, as added by Act 190 PA 1962 (R. 136, 137, see Appendix C, *infra*, pp. 7a-12a).

In addition to exercising such powers and performing such duties, appellee board after February 25, 1963, has entered 35 orders transferring territory between school districts within its jurisdiction under the statutory transfer powers [chapter 5, part 2 of The school code of 1955, as amended; CL 1948, § 340.461, et seq; MSA § 15.3461; Appendix A, *infra*, pp. 1a-2a (R. 137, 192, 193)].

• • •

The three-judge Court heard the case on the merits August 25, 1965; the opinions (254 F Supp 17, R. 198, 220) were filed May 2, 1966 and the order of dismissal was entered May 2, 1966 (R. 223).

SUPPLEMENTAL STATEMENT OF THE CASE

Appellants' Statement of the Case in their brief contains the following, at page 5:

> "The 0-19 school census taken annually in each local school district illustrates the relative size population-wise of the 40 local school districts within Kent County in 1963 and the 39 local school districts in 1964."

Appellants refer to the tabulations contained on pages 163 and 165 of the Transcript of Record.

We believe the Court should be advised that in 1964 the Michigan legislature adopted Act 289 of the Public Acts of 1964, which became effective August 28, 1964 [CL 1948, § 388.681 et seq; MSA § 15.2299(1) et seq], providing for the reorganization of school districts in the State of Michigan, the purpose of which as expressed in the act is to ultimately provide each child with at least 12 grades of education in his own school district.

May 25, 1966 Kent County voted favorably upon such a reorganization plan. See Appendix F, *infra*, pp. 17a-18a. The statute and plan so adopted are presently under constitutional attack in the Kent County Circuit Court. See Appendix G, *infra*, pp. 19a-20a. However, pending decision on the merits, the newly reorganized or created district is operating as a new district, and the former school districts so "reorganized" are dormant, under the order of the Honorable Fred N. Searl, Circuit Judge for the County of Kent. See Appendix G, *infra*, pp. 19a-20a.

Under the reorganization plan there are now only 21 operating school districts in the Kent County Intermediate School District. See Appendix H, *infra*, pp. 21a-23a.

Appellants in their brief at page 5 list 5 local school districts, their population, their vote for members of the county (intermediate) board of education and the population — variance ratio. Of the 5 school districts listed, namely, Ashley, Boyd, Hoag, Nelson Center and Grand

Rapids, only two are now operating, namely, Ashley and Grand Rapids. Nelson Center was annexed to Cedar Springs Public Schools (Nelson 5 Fractional) November 8, 1965. See Appendices I and J, *infra*, pp. 24a-26a. Boyd and Hoag were absorbed by the general reorganization vote.

ARGUMENT

I

The equal protection clause does not require apportionment of a Michigan county (intermediate) board of education on a one man one vote basis.

The one man one vote doctrine, enunciated in *Reynolds v Sims*, 377 US 533, 12 L ed 2d 506, 84 S Ct 1362, assumes that the one man has a constitutional or statutory absolute right to vote. Appellee contends that the individual appellants had and have no absolute right to vote for members of a Michigan county (intermediate) board of education, under the Constitution and laws of the State as historically interpreted and construed by the Supreme Court of Michigan.

(a) Historically in Michigan it has never been considered that the qualifications of school electors must be identical with those prescribed for general electors in the Constitution

In *Belles v Burr*, 76 Mich 1, 43 NW 24, it was held (76 Mich 11, 43 NW 28):

> "Viewing the question historically, it is apparent that for 50 years it has never been considered that the qualifications of voters at school-district meetings must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument. The authority granted by the

Constitution to the Legislature to establish a common or primary school system carried with it the authority to prescribe what officers should be chosen to conduct the affairs of the school-districts, to define their powers and duties, their term of office, *and how and by whom they should be chosen* (emphasis supplied).

"School-districts are regarded as municipal corporations. *School-district v Gage*, 39 Mich 484; *Seeley v Board of Education*, Id. 486. As such they preceded the Constitution (*Stuart v School-district*, 30 Mich. 69), and were recognized by that instrument (Const. 1835, Art. 10 § 3; Const. 1850, Art. 13, § 5). But no officer of the school-district is mentioned or recognized by that instrument. The reason is that the whole primary school system was confided to the Legislature, and it cannot be said that the officers of school-districts, chosen pursuant to the system adopted by the Legislature, are constitutional officers. The Constitution provided for no municipal subdivisions smaller than towns, except cities and villages, and it authorized the Legislature to incorporate these. Const. 1850, Art. 15, § 13."

After 127 years it has never been considered that the qualifications of Michigan school electors "must be identical with those prescribed in the Constitution as qualifications of electors entitled to vote under that instrument".

Although since 1951 (Act No. 257 PA 1951), the qualifications of Michigan school electors have been the same as those prescribed by the Constitutions of 1908 and 1963, such qualifications have been prescribed by the school code and not by the Constitutions. See Appendix D, *infra*, pp. 13a-14a for the qualifications of school electors found in the school code under the Michigan Constitutions of 1908 and 1963.

The rule of *Belles, supra*, has always been the law of Michigan.

(b) Education in Michigan belongs to the State. It is no part of the local self-governmental inherent in the township or municipality except so far as the Legislature may choose to make it such

In *Attorney General v Detroit Board of Education*, 154 Mich 584, 118 NW 606, the Supreme Court quoted with approval the opinion of the judges of the Wayne County Circuit Court, which, in part, was as follows (154 Mich 590, 118 NW 609):

> "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the Legislature may choose to make it such. The Constitution has turned the whole subject over to the Legislature. *Belles v Burr*, 76 Mich 1."

We quote from *MacQueen v Port Huron City Commission*, 194 Mich 328, 160 NW 627, as follows (194 Mich. 336, 160 NW 629):

> "Fundamentally, provision for and control of our public school system is a State matter, delegated to and lodged in the State legislature by the Constitution in a separate article entirely distinct from that relating to local government. The general policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers independent of the local government with which, by location and geographical boundaries, they are necessarily closely associated and to a greater or less extent authorized to cooperate. Education belongs to the State. It is no part of the local self-government inherent in the township or municipality except so far as the legislature may choose to make it such. *Belles v Burr*, 76 Mich 1 (43 NW 24); *Attorney General v Board of Education*, 154 Mich 584 (118 NW 606). The general school laws were carefully planned and enacted to guard that distinction; provision was made for organization of the common

> school districts, with officers elected at school meetings by electors with defined qualifications, and who as a school board were given large plenary powers and control of school matters, practically independent from the local government of municipalities in which the schools were situated."

Ruppert v Township School District, 252 Mich 482, 233 NW 387, quoting from *MacQueen, supra*, at page 336 (252 Mich 486-7, 233 NW 389); *Jones v Grand Ledge Public Schools*, 349 Mich 1, 84 NW 2d 327, also quoting *MacQueen, supra*, at page 5 (84 NW 2d 329) and *Lansing District v State Board of Education*, 367 Mich 591, 84 NW 2d 866.

See the Michigan constitutional provisions relating to education, Appendix E, *infra*, pp. 15a-16a.

(c) Historically the Michigan Legislature has prescribed that members of the boards of education of the various classifications of school districts be elected at large

In Michigan, in addition to a handful of school districts created by special acts of the legislature, known as special act school districts, there are 5 classifications of school districts, namely: primary school districts, fourth class school districts, third class school districts, second class school districts and first class school districts. The School Code of 1955, § 2; CL 1948, § 340.2; MSA § 15.3002. By statutory school census requirements, Detroit is the only first class school district and Grand Rapids and Flint are the only two second class school districts. The members of the boards of education of all 5 classifications of school districts are elected at large. This is recognized by District Judge Fox, in his dissent, when he said (254 F Supp 24, R. 211): "For even though members of local school districts are elected by popular election, the election of the 5 members of the Intermediate Board is by majority vote of the constituent school districts in the county, regardless of the respective populations of the several school districts."

(d) County (intermediate) school districts were first created in 1935, are state agencies distinct from the 5 classifications of local school districts and did not supersede or replace such school districts

County (intermediate) school districts were first created by Act No. 117 of the Public Acts of Michigan of 1935, known as "the County School District Act" (CL 1948, § 388.171, et seq, MSA § 15.161, et seq).

Section 2 of the 1935 act (CL 1948, § 388.172; MSA § 15.162) specifically provided that:

> "Said county school district shall include all the territory of the county but it shall not supersede nor replace any of the school districts organized and operating under laws enforced at the time of the passage of this act, nor shall it control or otherwise interfere with rights of said school districts, except as hereinafter provided in this act."

The statutory powers and duties of county (intermediate) school districts are set forth in full in Appendices B and C, *infra*, pp. 3a-12a, and are distinct from the powers and duties of constituent or local school districts of the classifications previously mentioned.

(e) In creating county boards of education, the Legislature, exercising its plenary power over education under the Constitution, did not provide for the popular election of members of the boards of education of such county school districts, except by referendum

In creating county school districts, the Legislature, acting under its plenary constitutional power, did not provide for the popular election of members of the boards of education of such county school districts. Rather, it was provided that the 5 members of each county board would be chosen at a meeting in the county of representatives

from each of the constituent local school districts. The statutory method of selecting board members is set forth in Appellants' brief, Appendix C, pages 2a through 5a. In 1962 the Legislature provided for a referendum on the popular election of members of intermediate boards of education. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, as amended by Act No. 290 PA 1964 and Act No. 52 PA 1965 (§§ 294b through 294h, CL 1948 340.294b, et seq; MSA § 15.3294 (2), et seq. For the full text, see Appellants' brief, Appendix E, pages 6a and 7a.

It should be noted that two amendments have been made to the referendum provision. Appellants complain that the current referendum provision is "meaningless" (Appellants' brief, page 15, Note 20). This argument should be addressed to the Michigan legislature and not to this Court.

(f) A Michigan school elector does not have an absolute right to vote for members of county (intermediate) boards of education and the Legislature is the only body which can give such right

In the recent 1962 case of *Lansing District v State Board of Education, supra*, a transfer of territory between school districts was involved and one of the questions presented was the following (367 Mich 594, 116 NW 2d 868):

> "3. Is section 461 of the school code unconstitutional as denying to plaintiff the equal protection of the laws, in that it grants a vote on the question of transfer of territory to the district from which detachment is made, while denying a vote to the district to which the territory is transferred?"

In disposing of this question, Mr. Justice Kavanagh, writing for a unanimous court, held (367 Mich 599, 116 NW 2d 870):

> "The third question raised by plaintiff school district is whether section 461 of the school code of 1955 is unconstitutional as denying to plaintiff the equal

protection of the laws in that it grants a vote on the question of transfer of territory to the district from which detachment is made, while denying a vote to the district to which the territory is transferred.

"Plaintiff does not question that the authority to alter boundaries may be delegated without the consent of the inhabitants of the territory annexed or the municipality to which it is annexed, or even against its express protest. Its claim is that to deny one district a vote with reference to the transfer and permit a vote in the other district is to deny the equal protection of the laws contrary to the provisions of both the State and Federal Constitutions. These objections have been disposed of against plaintiff's contention by the following decisions, which we content ourselves with citing: *Hunter v City of Pittsburgh*, 207 US 161 (28 S Ct 40, 52 L ed 151); *Attorney General, ex rel Battishill v Springwells Township Board*, 143 Mich 523.

"In order to deny the equal protection of the laws contrary to the provisions of the State and Federal Constitutions, it would be necessary for the electors in plaintiff school district to have an absolute right to vote on the annexation question. The above mentioned decisions clearly indicate they do not have such a right. The legislature is the only body that could give plaintiff school district such a right. This it has omitted. Not being entitled to the right, the fact that it is given to one district and not to the other does not deny the equal protection of the laws contrary to the provisions of the State and Federal Constitutions."

The Michigan Legislature has not given the individual appellants the absolute right to vote for members of county (intermediate) boards of education. The legislature is the only body that could give appellants such right. This having been omitted, the individual appellants are not entitled to the right.

At least since *Belles, supra,* it has been the law of Michigan that the legislature, under the various Constitutions of Michigan, *has plenary power to determine how school board members should be chosen and upon what matters school electors could vote.* Whether a school elector has or has not the right to vote for members of a county (intermediate) school district is of State concern only.

(g) Gray v Sanders is not parrallel with the case at bar

Appellants argue that the Georgia county unit system struck down by *Gray v Sanders,* 372 US 368, 9 L ed 821, 83 S Ct 801, parallels the Michigan statutory method for the selection of members of county (intermediate) boards of education. See appellants' Question Presented in their Brief at page 3, et seq.

We quote from *Gray* as follows (372 US, at page 379; 9 L ed 2d, at page 829; 83 S Ct, at page 808):

> "Georgia gives every qualified voter one vote in a statewide election; but in counting those votes she employs the county unit system which in end result weights the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties."

The Michigan legislature did not give every school elector one vote or any vote in the selection of members of county (intermediate) boards of education.

As stated by Mr. Justice Black in *Fortson v Morris,* 385 US 231, at page 233, 17 L ed 2d 330, at page 332; 87 S Ct 446, at page 448:

> "This case [*Gray*], as was emphasized, had to do with the equal right of 'all who participate in the election', 372 US, at 379, 9 L ed 2d at 829, to vote and have their votes counted without impairment or dilution. But as the Court said, 372 US, at 378, 9 L ed 2d at 829, the case was *'only a voting case'* [emphasis supplied]. Not a word in the Court's opin-

ion indicated that it was intended to compel a state to elect its governors or any other state officers or agents through elections of the people rather than through selections by appointment or elections by the State Assembly. It is wrongly cited as having either expressly or impliedly decided that a state cannot, if it wishes, permit its legislative body to elect its Governor."

Like *Fortson*, the case at bar is not "a voting case", because school electors had no right to participate in the selection of county board members.

Michigan constitutional general electors may have voting rights at the local level protected by the equal protection clause, but school electors only have such right to vote as the legislature chooses to give them.

What triggered this litigation was the request of the board of education of the Kentwood Public Schools to have the Kent County Board of Education transfer back to it from appellant The Grand Rapids School District territory which became Kentwood's on original consolidation in July of 1958 (*supra*, page 2). This was after 9 areas had been previously detached from Kentwood by political annexations to the City of Grand Rapids (see *supra*, page 2).

The vehicle used by appellants in their attempt to void the transfer back to Kentwood was to claim malapportionment of the county board of education. Actually, this is a transfer or annexation case.

The extent to which this Court has gone in respecting the plenary power of a state legislature to change the boundaries of school districts at will, without the consent of the persons affected and even against their express protest, is perhaps best illustrated by *Attorney General v Lowrey*, 131 Mich 639, 92 NW 289, affirmed by this Court in 199 US 233, 50 L ed 167, 26 S Ct 27 and *Hunter v Pittsburgh*, 207 US 161, 52 L ed 151, 28 S Ct 40.

The Court held in *Hunter* (207 US 178, 52 L ed 159, 28 S Ct 46):

"Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it."

We are perfectly aware that *Lowrey* and *Hunter* were related in context to the due process clause and not to the equal protection clause, but the analogy is valid.

The question of equal protection was squarely presented to the Supreme Court of Michigan in *Lansing District v State Board of Education, supra,* at page 12, 367 Mich 591 and the Court answered at page 599-600:

> "In order to deny the equal protection of the laws contrary to the provisions of the state and federal Constitutions, it would be necessary for the electors in plaintiff school district to have an absolute right to vote on the annexation question. The above mentioned decisions clearly indicate they do not have such a right. The legislature is the only body that could give plaintiff school district such a right. This it has omitted. Not being entitled to the right, the fact that it is given to one district and not to the other does not deny the equal protection of the laws contrary to the provisions of the state and federal Constitutions."

The equal protection clause does not require apportionment of a Michigan county (intermediate) board of education on a one man one vote basis and the Court should affirm the order entered below dismissing the complaint, as amended.

II

Should the Court hold that Michigan county (intermediate) boards of education are malapportioned, the transfer of territory to appellee Kentwood Public Schools should stand as the act of a de facto body.

Appellants seek to strike down §§ 294 and 294a of the Michigan school code on the ground they are violative of the equal protection clause and appellants also seek to void the resolution adopted by appellee The Board of Education of the County of Kent on February 25, 1963, transferring the 4 areas to appellee Kentwood Public Schools (Appellants' Brief, page 19).

Should the Court strike down §§ 294 and 294a, appellee Kentwood Public Schools urges that the transfer should stand as the act of a de facto body.

Appellants become emotional in their argument that (Appellants' Brief, page 17):

> "They [appellants] are the victims of a vicious perversion of representative government, blatantly displayed in public session. A board member whose school district [not Kentwood] had filed a petition to further dismember the appellant school district actively participated in the emasculation of appellant district (R. 129). It was this series of shocking events that gave impetus to appellants to turn to the federal court for protection."

The truth is that from 1958 through December 31, 1962, there were 35 political annexations of territory to the City of Grand Rapids, which territory was taken from other school districts and became a part of appellant school district by operation of law without vote of the school electors in the school districts affected, (*supra*, page 2, R. 124).

From the time appellee Kentwood Public Schools was created July 1, 1958, by the consolidation of 6 elementary school districts, to provide kindergarten through 12th grade education, to the political annexation and transfer of territory which triggered this litigation, there had been 9 detachments of territory from Kentwood Public Schools by political annexations to the City of Grand Rapids, which territory, so politically annexed, became a part of appellant school district, without a vote of the school electors of appellee Kentwood Public Schools (*supra*, page 2).

When the Kent County board of education commenced hearings on the resolution of appellee Kentwood Public Schools to transfer the territory back, Mary Keeler was both a member of the board of education of appellant, and a member of the board of education of appellee. Counsel for appellee Kentwood Public Schools requested that Mary Keeler recuse herself from participating in the hearing, because of the obvious conflict of interests. This she refused

to do (R. 128). The vote of appellee The Board of Education of the County of Kent for the transfer was 4 to 1. It was Mary Keeler who voted against the transfer.

If § 143 of the school code of 1955 had not been repealed (*supra*, page 3), the truth is that appellee Kentwood Public Schools would have been destroyed as a high school district.

The resolution of the board of education of appellee Kentwood Public Schools requesting the transfer sets forth in detail the series of events which compelled that board to take action in self preservation (R. 30 through 39).

(a) At the time the transfer of territory was ordered, appellee county board was a de facto [if not de jure] body and its act of transfer is valid

The three judges composing the district court agreed unanimously that the transfer should stand. Judge Fox held (254 F Supp, at page 26):

> "Following the well established principle that the acts of a de facto body have full legal effect, the Court is not disposed to grant plaintiffs this facet of the relief they seek. The possible harm in setting a precedent of this sort, even on the facts of this case, is viewed as more to be shunned than the harm resulting to individual plaintiffs by allowing the transfer to stand. Orderly functioning of government demands no less. See *Johnson v. Genesee County*, 232 F Supp 567 (E.D. Mich, 1964); *Scholle v Hare*, 367 Mich 176, 116 NW 2d 350; *Williams v Secretary of State*, 145 Mich 447, 108 NW 749; and *State v Sylvester*, supra.
>
> "The preferable course is to allow a properly apportioned body to remedy whatever ills have come about by acts of its malapportioned state, and this is the policy which this court will follow."

Judges O'Sullivan and Kent concurred with Judge Fox, holding (254 F Supp, at page 28):

> "We find ourselves in a position where we concur with Judge Fox, writing for the Court, in reaching the conclusion that this Court will not overturn the acts of the de facto Kent Intermediate Board."

Yokley states (1 Yokley Municipal Corporations, § 19, pages 38 and 39):

> "A public or municipal corporation de facto exists where there is some law under which a corporation with powers assumed might have lawfully been created; a colorable and bona fide attempt to perfect an organization under such a law; and user of the rights claimed to have been conferred by that law.
>
> "For a de facto corporation to exist, there must be a valid statute authorizing incorporation, organization in good faith under such statute, colorable compliance with the statute, followed by the assumption of corporate powers. The doctrine of de facto municipal jurisdiction is not predicated on a valid legislative enactment, but on a presumptively valid enactment that is subsequently judged to be invalid, but under which the municipality exercises jurisdiction and rights are acquired on the assumption that the enactment is valid."

Mr. Justice Souris, concurring with the majority decision in *Scholle v Secretary of State*, 367 Mich 176, 116 NW 2d 350, that the provisions of the Michigan Constitution setting forth districts for the election of state Senators denied equal protection, said (367 Mich, at pages 244 and 245):

> "The Chief Justice, relying upon *Norton v Shelby County*, 118 US 425 (6 S Ct 1121, 30 L ed 178), and citing *Carleton v People*, 10 Mich 250; *People v. Payment*, 109 Mich 553; and *Kidd v McCanless*, 200 Tenn 273 (292 SW 2d 40), asserts that by our ruling that the 1952 amendments are void, 'the senatorial districts created thereby become nonexistent' and conse-

quently, he concludes that the incumbents cannot act as de facto officers in the absence of de jure offices. Presumably, it would follow from his conclusion, there being no de jure nor de facto State senators following our judgment today, either that the full legislative power of the State resides exclusively in the house of representatives which may alone legally enact the necessary laws to effectuate the Court's judgment, or that the whole legislative process is suspended for lack of a validly existing senate. The prospect of an unicameral legislature even for only the time it may take to establish new senatorial seats pursuant to the Constitution, presents a heady temptation for judicial experimentation. The other prospect, which one of my Brothers earlier characterized as an 'argument in terrorem' is not a practical possibility so long as this Court exercises responsibly its authority. I know of no constitutionally responsible court in the land which ever has, or would, countenance such a chaotic result, — and, certainly, there is no compelling reason for us to lead the way.

"The de facto doctrine is another of our legal fictions by which the law manages somehow to preserve orderly governmental procedures when by some legal defect invalidating one's title to public office, his otherwise valid acts will be upheld by the courts. Otherwise, all who have business to transact with public officials would be compelled to ascertain their status as de jure officials at pain of invalidity of acts done under color of title to office. The doctrine has a salutary effect, thus broadly stated, but its obvious beneficial effect has been limited by some courts which have said that the doctrine does not apply where there is no de jure office. Norton v Shelby County, supra, relied upon by the Chief Justice, is such a case but, like others so limiting the doctrine, it involved a situation where an office was attempted to be created, by act subsequently declared invalid, to perform duties constitutionally delegated to another office. Limitation of the doctrine in such cases settles what is fundamentally

a dispute between 2 contenders for public power — one a de jure and the other a de facto officer. In the absence of such conflict, where the only question is whether validity is to be given to the acts of a de facto officer whose office is found to have been illegally created, there appears to be no reason in logic or law to so restrict or otherwise limit application of the legally convenient de facto doctrine."

For other Michigan cases not cited by Judge Fox, see *Carlisle v City of Saginaw*, 84 Mich 134, 47 NW 444; *Giddings v Secretary of State*, 93 Mich 1, 52 NW 944; *People v Payment*, 109 Mich 553, 67 NW 689; and *People v Russell*, 347 Mich 193, 79 NW 603.

The Tenth Circuit Court of Appeals in *Town of Maysville, Oklahoma v Magnolia Petroleum Co.*, 272 F 2d 806, at page 811, stated the de facto doctrine as follows:

"The courts do not agree on when a municipal corporation is so utterly void in its inception as to be incapable of de facto recognition. McQuillin, Munic. Corp., § 3.48. But the policy of the law strongly favors legal recognition of the de facto existence of a corporation. Indeed, the importance of stability and certainty in matters involving corporate franchises has prompted one court to hold that 'The fact that the organization was so defective as to be void in its inception does not change the rule. There is no room or place here for distinction between things that are voidable and things that are void. Neither the nature nor the extent of the illegality in organization can affect the application of these principles * * *.' *Bowman v City of Moorhead*, 228 Minn 35, 36 NW 2d 7, 9, 7 ALR 2d 1401. The extreme reluctance of the courts to declare the legal nonexistence of a corporation which actually does exist as a corporate entity, is reflected in the numerous cases involving private capacity to attack the fixing or extension of municipal limits or boundaries. See Annotation 13 ALR 2d 1279."

See also *Tulare Irrigation District v Shepard*, 185 US 1, commencing at page 13; 46 L ed 773, commencing at page 780, 22 S Ct 531, commencing at page 536.

Since the order of transfer February 25, 1963, the Appellee county board of education has ordered 35 transfers of territory (*supra*, page 5), in addition to exercising the powers and performing the duties granted to and imposed on it by the statutes (*supra*, page 5).

In the congressional and legislative apportionment cases decided by the Court, since *Baker v Carr*, the Court has never turned the clock back and stopped the functioning of government pending reapportionment on a constitutional basis and the Court should not do so now.

An example of this principle is found in the cases involving the Georgia General Assembly. Appellants have pointed out in their brief that in *Toombes v Fortson*, 384 US 210, 86 S Ct 1464, 16 L ed 2d 482, affirming 241 F Supp 65, the Court held that the General Assembly could continue to function until May 1, 1968, despite the fact that it was unconstitutionally malapportioned. Subsequently, in *Fortson v Morris*, *supra* (385 US 231, at page 14 of our brief), the majority of this Court held that it was constitutional for the General Assembly to elect the Governor of the state even though the General Assembly was malapportioned, since it was a de facto body. Appellants argue, by using a strange and backwards type of logic, that such a body has more right to a de facto status than the Kent County Board of Education which has never been declared, either directly or indirectly, by any court to be unconstitutionally composed. Furthermore, the act of transfer complained of in the case at bar was 4 years ago, 1½ years before *Reynolds v Sims*, and the companion cases, for the first time enunciated the one man one vote principle, and even several weeks before (February 25, 1963 to March 18, 1963) *Gray v Sanders* was decided. At the time of the action of February 25, 1963, by the Kent County Board of Education, even appellants make no claim that any decision enunciated by this Court had any bearing upon the constitutionality of the composition of such a body

as the Kent County board. The only apportionment decision at that time was *Baker v Carr*. That case, as we understand it, decided 3 things and no more: 1) that the Court possessed jurisdiction of the subject matter; 2) that a justiciable cause of action was stated; and 3) that the appellants had standing to challenge the Tennessee apportionment statutes. To say that the board at that time was not a de facto body is not only contrary to any apportionment decision made by this court or by any federal or state court up to the present time, but also opens up an incredible Pandora's box. Probably every act passed by almost every elective body in state or local government up to that time and later could be declared null and void on the same grounds. Chaos would result from any such decision. All past actions of the Kent County board, including the one complained of, are the acts of a de facto body.

Should the Court hold that Michigan County (Intermediate) boards of education are malapportioned, we urge the Court to specifically affirm the unanimous decision of the District Court and hold that the transfer stands as the act of a de facto body.

(b) The act of the State Board of Education, on appeal by appellant school district, in reversing the county board of education and transferring certain but not all of the territory requested, was the act of a de jure body

Appellant school district appealed the county board's order to the State Board of Education, under the provisions of § 467 of the school code (*supra*, page 4; see Appendix A, *infra*, page 1a-2a).

The State Board of Education was constituted by § 6, Article XI of the 1908 Constitution, the 4 members of which were elected at large by the people of the State (*supra*, page 4 and Appendix E, *infra*, pages 15a-16a) and has never been a party to the suit (*supra*, page 4).

The ex parte temporary restraining order originally issued by Judge Kent [later revoked] enjoined only the county board of education from acting on the requested transfer until further elections brought the malapportionment into balance (*supra*, page 3).

Under the appeal statute, the Kentwood board of education or any resident owner of land in either the Kentwood district or the Grand Rapids district, could have appealed to the State Board of Education, if there had been no action on the resolution requesting transfer by the county board within 60 days of the receipt of the resolution, *notwithstanding the restraining order*. See Appendix A, §§ 461 and 467, *infra*, page 3. The act of the State Board of Education was an independent act and the order of the State Board of Education entered June 5, 1963 (R. 167) was the act of an unquestioned de jure body and should be sustained as such.

III

Appellant The Board of Education of the City of Grand Rapids does not have standing, because as a municipal corporation, it does not have privileges or immunities under the Federal Constitution which it may invoke against its creator.

Appellant The Board of Education of the City of Grand Rapids is a school district of the second class, organized and existing under the provisions of chapter 5, part 1 of The School Code of 1955, as amended (CL 1948, § 340.141, et seq; MSA § 15.3141, et seq) and is a municipal corporation (*Attorney General ex rel McRae v Thompson*, 168 Mich 511, 134 NW 722), created by the State of Michigan for the better ordering of education in the State, and, as such, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of the State.

In *Williams v Baltimore*, 289 US 36, 77 L ed 1015, 53 S Ct 431, where the question was squarely raised, the Gen-

eral Assembly of Maryland adopted a statute exempting the property of a particular railroad from taxation. The mayor and City Council of Baltimore, and the mayor, counselor and aldermen of the City of Annapolis, municipal corporations, challenged the statute as invalid under the Fourteenth Amendment to the Constitution of the United States.

Mr. Justice Cardozo, in delivering the unanimous opinion of the court, disposed of this question in 2 one sentence paragraphs as follows (289 US 40, 77 L ed 1020, 53 S Ct 432):

> "1. There is error in the holding of the Circuit Court of Appeals that the statute of Maryland creating this exemption is a denial to the respondents of the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.
>
> "A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator. (Citing cases)."

Coleman v Miller, 307 US 433, 441, 83 L ed 1385, 1390, 59 S Ct 972, 976; *City of Houston v State,* 142 Tex 190, 176 SW 2d 928, appeal dismissed for want of substantial federal question, citing *Williams,* 322 US 711, 88 L ed 1554, 64 S Ct 1159.

In *Lansing District v State Board of Education,* 367 Mich 591, 116 NW 2d 866, Mr. Justice Kavanagh, writing for a unanimous Court, held (367 Mich 600, 116 NW 2d 870):

> "We do not believe plaintiff (The School District of the City of Lansing) is a proper party to raise the question of whether or not its residents have the right to vote on the transfer. This right, if existing at all, would exist in the voters and not in the school district. Plaintiff school district is an agency of the

> State government and is not in a position to attempt to attack its parent. The question of how and where individuals would vote is a question between the individuals themselves and the government."

Title 42 United States Code § 1983 grants a civil action for deprivation of rights to "every person". *Monroe v Pape*, 365 US 167, 191, 5 L ed 2d 492, 507, 81 S Ct 473, 486, squarely holds that a municipal corporation is not a "person" within the meaning of § 1983. See also *Egan v City of Aurora*, 365 US 514, 5 L ed 2d 741, 81 S Ct 684.

District Judge Fox, in his dissenting opinion, correctly recognized this lack of standing on the part of appellant The Board of Education of the City of Grand Rapids, when he said (254 F Supp, at page 27):

> "The rights involved in this case being voting rights, and as such, personal, plaintiff Board of Education of the City of Grand Rapids and intervening plaintiff City of Grand Rapids are held to have insufficient standing to remain as parties to this action." [The City of Grand Rapids is not a party to this appeal].

Clearly, appellant The Board of Education of the City of Grand Rapids has no standing on this appeal and should be dropped as an appellant.

CONCLUSION

We urge on behalf of Appellee Kentwood Public Schools that:

1. The order entered below dismissing the complaint, as amended, be affirmed; or

2. If the Court strikes down §§ 294 and 294a of the Michigan school code as violative of the equal protection clause, the Court specifically affirm the unanimous decision of the District Court that the transfer of territory stands

as the act of a de facto body and the order of the State Board of Education was the act of a de jure body; and

3. The Court hold that appellant The Board of Education of the City of Grand Rapids has no standing.

Respectfully submitted,

March 17, 1967.

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APPENDIX A

EXTRACTS FROM MICHIGAN STATUTORY PROVISIONS WITH REFERENCE TO THE TRANSFER OF TERRITORY BETWEEN SCHOOL DISTRICTS

Section 461 of The School Code of 1955 as amended; 1948 Michigan Compiled Laws, § 340.461; Michigan Statutes Annotated, §15.3461

Transfer of territory between districts; resolution or petition, period for final action; approval by electors. Sec. 461. The county board of education may, in its discretion, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than ⅔ of the resident owners of the land to be transferred. The county board of education shall take final action in regard to the resolution or petition within a period of 60 days of the receipt of the resolution or petition. Only territory contiguous to a district may be transferred. Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon.

Section 462 of The School Code of 1955; 1948 Michigan Compiled Laws, § 340.462; Michigan Statutes Annotated, § 15.3462

Same; notice of hearing, posting, publication. Sec. 462. The county superintendent of schools shall give at least 10 days' notice of the time and place of the meeting of the county board of education and of

the proposed alteration in school district boundaries to be considered at said meeting, by posting such notice in at least 5 public places in each of the districts whose territory may be affected by such alteration and by publication at least once prior to such meeting in a newspaper of general circulation in the territory of the affected districts.

• • •

Section 467 of The School Code of 1955, as amended; 1948 Compiled Laws of Michigan, § 340.467; Michigan Statutes Annotated, § 15.3467

Same; appeal to state board of education. Sec. 467. Any one or more resident owners of land considered for transfer from 1 district to another, or the board of any district whose territory is affected, may appeal the action of the county board of education or joint boards in transferring such land, or the failure to transfer such land, or the action taken relative to the accounting determination, to the state board of education within 10 days after such action or determination by the county board of education or the joint boards. If the county board of education or the joint boards fail to take action within the time limit prescribed in section 461, the appeal may be made to the state board of education within 10 days following the termination of the period. Such appeal shall have the effect of holding the effectiveness of the resolution from which appealed in abeyance until the appeal is acted upon by the state board of education.

The state board of education is hereby empowered to consider such appeals and to confirm, modify or set aside the order of the county board of education or the joint boards and its action on any such appeal shall be final.

APPENDIX B

Powers and duties of the county board of education under the provisions of § 297 of the school code of 1955, as amended (CL 1948, § 340.297; MSA § 15.3297).

SEC. 297. The powers and duties of the county board of education shall be as follows:

(a) To receive from the county treasurer such reports of delinquent taxes due school districts as this official is required by law to file with township and city clerks and to compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county shall, at the time of making monthly settlements with the several township and city treasurers of the county, file with the secretary of the county board of education a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which these delinquent school taxes shall have been paid. The county board of education shall, upon receipt of such statements, compute the amount of delinquent school taxes and interest thereon included in such statement that shall be due each school district of the county and shall, within 30 days from receiving the statement from the county treasurer, give notice to the secretary of each school board of the county of the amount of delinquent school taxes and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(b) To recommend the purchase of library books for all school libraries and of all instructional equipment in school districts not employing a superintendent of schools.

(c) To employ a county superintendent of schools and such assistants, including in its discretion a deputy, as it shall deem necessary for the best interest of the county

and to fix the compensation for the same except as otherwise provided in section 300 of this act. That part of the compensation of the county superintendent of schools as is paid from county funds and the compensation of the deputy and assistants which shall include salaries and traveling expenses incurred in the discharge of their official duties and the necessary and contingent expenses of the office of the county board of education and the county superintendent of schools for printing, postage, stationery, record books, equipment, office and telephone rental, rent of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, and elections conducted by the county board of education, shall be paid by the county treasurer after the same have been authorized by the county board of education from such amounts as may be appropriated therefor by the county board of supervisors. The county board of education shall employ and contract with for a term of not to exceed 4 years a county superintendent of schools who shall have the qualifications and perform the duties as provided in this act. On or before the close of each term, or sooner if there should be a vacancy, the superintendent's successor shall be employed as herein provided.

(d) Each county board of education shall make or cause to be made a map of the county, showing by district lines thereon the boundaries of each school district and parts of school districts therein, if such school districts exist, and shall number the same thereon as established by proper authority. One copy of such map shall be filed in the office of the county superintendent of schools, 1 copy shall be filed with the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction. If any division or alteration is at any time made in the boundary lines of any district the county board of education shall, within 1 month thereafter, file a new map and copies thereof as aforesaid showing such changes.

(e) The county board of education shall cause to be taken an annual school census by the agency and in the

manner provided in chapter 30, part 2 of this act, in each and every school district within the provisions of this act.

(f) The county board of education shall make out an annual budget showing the total amount required to carry on the lawful activities of the county board of education, which amount shall be assessed and collected at the same time and in the same manner as other county taxes are assessed and collected and paid out by the proper authorities of said county upon the direction of the county board of education.

(g) The county board of education shall be empowered to furnish services on a consultant or supervisory basis to any school district employing a superintendent of schools upon request of the board of education of that district

(h) The county board of education shall be empowered to employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, and homebound children of normal mentality: Provided, That no school district other than the county district is able or is willing to provide such services; And provided further, That such programs are previously approved by the superintendent of public instruction. Such programs when approved may be reimbursed in accordance with the provisions of chapter 17 of part 2 of this act.

(i) The county board of education shall be empowered to direct, supervise and conduct cooperative education programs within the county in behalf of school districts which request such services from the county board of education. The county board of education is empowered to utilize any available funds, appropriated by the county board of supervisors for that purpose or allocated by boards of education of the cooperating school districts, and to accept contributions from other sources, for the purpose of financing the programs. Such funds shall be deposited with the county treasurer through the county superintendent of schools in a special fund and shall be disbursed as the

county board of education shall direct. Notwithstanding any other provision of law, the county board of supervisors is hereby authorized to appropriate, and the boards of education of the various school districts are hereby authorized to allocate, available funds not otherwise obligated by law, for such educational programs. The county board of education shall have power to employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

APPENDIX C

Powers and duties of the board of education of intermediate school district under the provisions of § 298a of the school code of 1955, as added by Act No. 190 PA 1962, effective March 28, 1963 (CL 1948, § 340.298a; MSA 15.3298 (1)).

Same; powers and duties.

SEC. 298a. (1) The board shall:

Statutes; Superintendent of public instruction; Constituent districts.

(a) Perform such duties as required by law and by the superintendent of public instruction, but shall not supersede nor replace the board of education of any constituent school district, nor shall it control or otherwise interfere with the rights of constituent districts except as provided in this chapter.

Superintendent and other personnel; compensation, expenses, supplies, equipment, service.

(b) Employ a superintendent and such assistants, including, in its discretion, a deputy, as it deems necessary for the best interest of the district and fix the compensation for the same. The compensation of the superintendent and his deputy and assistants, which shall include salaries and travel expenses incurred in the discharge of their official duties and the necessary contingent expenses of the office of the board and the superintendent for printing, postage, stationery, record books equipment, office and telephone rental, rental of rooms for teachers, or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, elections conducted by the board, expenses incurred by the board in the legal performance of its duties, expenses incurred for heat, light, electricity, insurance, buildings and grounds maintenance, per diem of board members, and their expenses incurred in traveling in the discharge of their official duties, reference books,

professional journals, instructional supplies and equipment, legal fees, janitorial supplies and equipment, shall be paid by the treasurer, after the same have been authorized by the board, from such amounts as have been levied and collected therefor by the county board of supervisors and from any other available funds. The board shall employ and contract for a term of not to exceed 4 years, a superintendent who shall have the qualifications and perform the duties as provided in this chapter. On or before the close of each term, or sooner if there is a vacancy, the superintendent's successor shall be employed as herein provided.

Budget, preparation, filing.

(c) Prepare an annual general budget which shall be in the same form as that provided for other school districts. On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named from each constituent school district to represent such a district. At such meeting the president of the intermediate district board shall preside, the secretary shall keep the minutes and the representatives of constituent district boards shall by majority vote determine the maximum amount of the intermediate district general budget but shall not make final determinations as to line items in such a budget. Following such meeting the intermediate district board shall file its budget, the maximum amount of which shall not exceed that approved by the school board representative of constituent districts, with the county clerks of the counties in which it has territory. Each county clerk receiving the budget shall deliver it to the tax allocation board in the same manner as other school district budgets are handled.

Tax allocation board, certificate of rate.

The tax allocation board shall receive the budgets from its county clerk, shall treat them as other school district budgets are treated and shall allocate tax rates to intermediate school districts for the purposes set forth in this act. When the intermediate district board has received an allocation on the basis of its budget, it shall certify

for collection to the city and township officials concerned a statement of the amount of taxes to be levied, which certification shall be made at the same time and in the same manner as that of other school districts. The rate certified for levy shall not exceed the amount allocated.

Levy and collection of taxes.

On receipt of the statement from such board, the city and township officials responsible for the levying and collection of taxes shall spread on the tax roll an intermediate school district tax equal to the amount ordered spread, and shall collect such taxes in the same manner as other taxes are collected.

Payments to treasurer of the board.

Taxes collected under the provisions of this chapter shall be paid over to the county treasurer in the same manner as other county taxes are paid over, and similar accounts and records shall be kept. The county treasurer shall pay over all funds received under this act to the treasurer of the board. County treasurers of counties in which fractions of the intermediate school districts operating under this act are situated shall pay over those funds collected under the act to the treasurer of the board.

Taxes, assessment and levy, collection; budgets.

Intermediate school district taxes shall be assessed, levied and collected as provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Compiled Laws of 1948. Budgets shall be submitted and intermediate school districts shall be governed by the provisions of Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217a of the Compiled Laws of 1948.

Delinquent taxes, report.

(d) Receive from the county treasurer such reports of delinquent taxes due school districts as he is required by law to file with township and city clerks and compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer

of each county, at the time of making monthly settlements with the several township and city treasurers of the county, shall file with the secretary of the board a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which the delinquent school taxes have been paid. The board, upon receipt of such statements, shall compute the amount of delinquent school taxes and interest thereon included in the statement which are due each school district of the county and, within 30 days from receiving the statement from the county treasurer, shall give notice to the secretary of the board of education of each school district of the amount of delinquent school tax and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

Maps, filing.

(e) Prepare a map of the intermediate district annually as of July 1, showing by distinct lines thereon the boundaries of each constituent school district. One copy of such map shall be filed in the office of the superintendent, 1 copy shall be filed with each of the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction, and 1 copy shall be filed in the office of the secretary of state.

School census.

(f) Cause an annual school census to be taken by the agency and in the manner provided in sections 941 to 948 of this act, in each and every school district within the provisions of this chapter.

Consultant or suprevisory services.

(g) Furnish services on a consultant or supervisory basis to any constituent school district upon request of that district.

Employment of teachers for special education programs, reimbursement.

(h) Employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, mentally retarded, physically handicapped, emotionally distressed, homebound children of normal mentality and any other atypical children if the programs are previously approved by the superintendent of public instruction, and if no school district other than the intermediate district is able and willing to provide such services. The district, when the programs have been approved by the superintendent of public instruction, may be reimbursed in accordance with the provisions of sections 771 to 780 * * *.

Cooperative educational programs; funds.

(i) Direct, supervise and conduct cooperative educational programs in behalf of the constituent school districts which request such services. The board may utilize any available funds not otherwise obligated by law, and accept contributions from other sources, for the purpose of financing the programs. The funds shall be deposited with the treasurer in a special fund and shall be disbursed as the board of education shall direct. Notwithstanding any other provision of law, the board of supervisors may appropriate, and the boards of education of the constituent school districts may allocate available funds not otherwise obligated by law, for such educational programs. The board may employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

Same; conduct with other intermediate districts.

(j) Conduct cooperative programs mutually agreed upon by the boards of 2 or more intermediate school districts.

Schools for juvenile court wards.

(k) When directed by the board of supervisors, establish, if the board deems necessary, a school for those per-

sons of school age who are housed in children's homes operated by the juvenile court or who are living at home but assigned to such school by a juvenile court. The board of education may lease or purchase sites for such schools, build, lease or rent housing facilities for such schools, may employ such teaching and supervisory staff as is necessary to operate such schools, is authorized to make rules and regulations covering the operation of such schools, may exclude students for reason of persistent misbehavior, or bodily conditions and habits disturbing to the orderly conduct of the school, is authorized to classify and promote students for instructional purposes, and otherwise do all those things necessary to the proper conduct of such a school.

Sites and building facilities.

(1) The board of education may lease or purchase sites, build, lease or rent such facilities as may be necessary for its staff.

Administration of oaths.

(2) Any member of the board may administer oaths for the qualifying of board members and oaths required in any other transaction connected with, or related to, the educational program of the intermediate school district.

Board of canvassers, appointment.

(3) The intermediate school district board shall appoint a board of canvassers in accordance with the provisions of section 514a.

APPENDIX D

THE QUALIFICATIONS OF SCHOOL ELECTORS

Chapter 4, part 2, of The School Code of 1955, as last amended by Act No. 257 of the Public Acts of 1951, with reference to school elections and the qualifications of school electors under the 1908 Constitution, provided as follows:

School electors; qualifications. Section 1. A school elector shall possess the qualifications provided for qualified electors in section 1, article 3 of the constitution (1908): Provided, That upon questions involving the direct expenditure of public moneys or the issue of bonds, school electors shall possess the qualifications provided in section 4 of article 3 of the constitution: Provided further, That no person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding said election. (C.L. '48, § 354.1; C.L. '29, § 7410.)

Chapter 7, part 2, of The School Code of 1955, as amended, with reference to school elections and the qualifications of school electors under the 1963 Constitution, provides as follows:

School electors, qualifications; repeat elections on proposals. (M.S.A. 15.3511)

Sec 511. A school elector shall possess the qualifications provided for qualified electors in section 1 of article 2 of the constitution (1963) and statutes enacted thereunder. Upon questions involving the increase of the ad valorem tax limitation imposed by section 6 of article 9 of the constitution for a period of more than 5 years or the issue of bonds, school electors shall possess the qualifications provided in section 6 of article 2 of the constitution. No person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding the election. The same question or measure involving consolidation of school districts, annexation of entire districts, annexation or transfer of a portion of 1 school district to another, or bonding of school districts,

shall not be submitted to the voters of any school district more often than once in 6 months, unless the board is presented with a petition requesting the board to call another election and signed by qualified school electors of the district to the number of not less than 50% of the registered general electors residing in the district as of the date the petition is presented to the board. Any city or township clerk shall certify to the intermediate school district superintendent of schools the number of registered general electors residing in a school district when requested by the intermediate school district superintendent, who shall make the information available to the board of the district.

APPENDIX E

MICHIGAN CONSTITUTIONAL PROVISIONS RELATING TO EDUCATION

1908 Michigan Constitution, Article XI, Education

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

* * *

State board of education; election; powers and duties. Sec. 6. The state board of education shall consist of four members. On the first Monday in April, nineteen hundred nine, and at each succeeding biennial spring election, there shall be elected one member of such board who shall hold his office for six years from the first day of July following his election. The state board of education shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.

* * *

Primary school system. Sec. 9. The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least five months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing two years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing two years, based upon the then

enrollment in the seventh and eighth grades in said school district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing two years.

• • •

1963 Michigan Constitution, Article VIII, Education

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Free public elementary and secondary schools; discrimination. Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Convention comment.

This is a revision of Sec. 9, Article XI, of the present (1908) constitution which fixes responsibility on the legislature to provide "primary" education. To conform to present practice and court interpretations, "primary" is changed to "elementary and secondary." The balance of the section is excluded because its restrictions as to finance and definitions as to basic qualifications needed to be eligible for state aid are better left to legislative determination.

The anti-discrimination clause is placed in this section as a declaration which leaves no doubt as to where Michigan stands on this question.

Note: The convention comment above is quoted from Volume 1, Michigan Statutes Annotated, 1965 Revised Volume at page 615.

APPENDIX F

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF KENT)

ROSCOE C. MINER, Superintendent of the Kent Intermediate School District, being duly sworn deposes and says:

(1) Following is a true statement of the canvass of the election held on the 25th day of May, 1966 in the Kent Intermediate School District on the following question:

SHALL THE APPROVED REORGANIZATION PLAN FOR THE KENT INTERMEDIATE SCHOOL DISTRICT BE ADOPTED?

Upon a canvass of votes by the duly appointed canvassers of the election, William Doorn, Addelyn Dykhouse, James H. Himes, and Margaret J. Ruffe held on the evening of May 25, 1966 following the election the vote was determined to be as follows:

Precinct #1	In Favor 121	Against 22	Spoiled Ballots 2
Precinct #2	In Favor 232	Against 37	Spoiled Ballots None
Precinct #3	In Favor 83	Against 47	Spoiled Ballots None
Precinct #4	In Favor 168	Against 299	Spoiled Ballots 4
Precinct #5	In Favor 114	Against 55	Spoiled Ballots None
Precinct #6	In Favor 41	Against 5	Spoiled Ballots None
Precinct #7	In Favor 53	Against 6	Spoiled Ballots None
Precinct #8	In Favor 127	Against 43	Spoiled Ballots None
Precinct #9	In Favor 130	Against 93	Spoiled Ballots 2
Precinct #10	In Favor 42	Against 16	Spoiled Ballots None
Precinct #11	In Favor 205	Against 113	Spoiled Ballots None
Precinct #12	In Favor 47	Against 24	Spoiled Ballots None
	Total —— In Favor 1363	Total —— Against 760	Total —— Spoiled Ballots 8

(2) That the aforesaid election became effective in the Kent Intermediate School District immediate following the election held on the 25th day of May, 1966.

Further deponent sayeth not:

(s) Roscoe C. Miner
Roscoe C. Miner, Superintendent of
Kent Intermediate School District

Sworn and subscribed before me this
1st day of March, 1967

Notary Public for Kent County, State of Michigan
(s) Grace L. Knol
My Commission Expires: August 20, 1967

APPENDIX G

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

SCHOOL DISTRICT NO. 7, frl., NELSON TOWNSHIP, KENT COUNTY, MICHIGAN a/k/a EAST NELSON SCHOOL DISTRICT, et al,

Plaintiffs

vs

THE BOARD OF EDUCATION OF THE INTERMEDIATE SCHOOL DISTRICT OF THE COUNTY OF KENT, a Michigan Municipal Corporation, and, ERWIN J. KLEINERT, Individually and as Superintendent of the Intermediate School District of the County of Kent,

Defendants

ORDER
FILE NO. 4585

At a session of the above entitled Court held in the Court House in the City of Grand Rapids on the 1st day of September, 1966;

Present: Hon. FRED N. SEARL, Circuit Judge.

Defendants' Board of Education of the Intermediate School District of the County of Kent, and Erwin J. Kleinert and Intervenor's Motion to Dissolve any and all Temporary Restraining Orders and Temporary Injunctions having come on to be heard and the Court being fully advised in the premises,

IT IS ORDERED that Defendants' and Intervenor's Motion to Dissolve any and all Temporary Restraining Orders and Temporary Injunctions previously issued by this Court is hereby granted.

IT IS FURTHER ORDERED that all Plaintiffs' school districts turn over their books and records to the high

school district to which they were assigned pursuant to the Kent County Intermediate Reorganization plan.

IT IS FURTHER ORDERED that a separate and accurate accounting and record of all property, assets, records and funds turned over by Plaintiffs' school districts to the high school district to which they became attached be maintained by the high school district in order to avoid any litigation in the future involving accounting problems in the event the Plaintiffs' school districts prevail in the final decision of this action.

IT IS FURTHER ORDERED that the Defendants' high school district utilize the property of Plaintiffs' school districts in such a manner as to comply with any conditions upon which Plaintiffs' school districts hold their property to prevent the reversion of the property during the pendency of this proceeding.

This order is without prejudice as to the rights of the parties as set forth in the pleadings.

FRED N. SEARL
Circuit Judge

Attest: A true copy
Jack Bronkema, Clerk
(s) Stanley E. Neureither
Deputy

(countersigned)
Stanley E. Neureither

Approved as to form:
(s) James J. Wood
Assistant Attorney General
The Capitol, Lansing, Mich.

(s) Thomas J. Nordberg
Attorney for Defendants
901 Capitol Savings & Loan Bldg.
Lansing, Michigan

(s) Lee Boothby
Attorney for Plaintiffs
311 East Main Street
Niles, Michigan.

APPENDIX H

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF KENT)

ROSCOE C. MINER, Superintendent of the Kent Intermediate School District, being duly sworn deposes and says:

(1) That he is the Superintendent of the Kent Intermediate School District of the State of Michigan,

(2) That the following described school districts are constituent school districts to the Kent Intermediate School District as of September 1, 1966:

1. Ashley School District, Grattan 6fr
   Census 61 Class Primary
2. Byron Center Public School, Byron 1fr
   Census 2210 Class Fourth
3. Caledonia Community Schools, Caledonia 1fr
   Census 2325 Class Fourth
4. Cedar Springs Public Schools, Nelson 5fr
   Census 2219 Class Fourth
   (included now in the above are the former primary districts (1964-65) Courtland Center, Courtland 3fr; Benham, Courtland 5; Evans, Courtland 6fr; East Nelson, Nelson 3fr; Nelson Center, Nelson 6; Huggard, Nelson 7fr; Griswold, Spencer 1fr, and Victory, Spencer 2)
5. Comstock Park Public Schools, Plainfield 9fr
   Census 2174 Class Fourth
6. East Grand Rapids Public Schools, Grand Rapids 3fr
   Census 4688 Class Third
7. Forest Hills Public Schools, Grand Rapids 15fr
   Census 4227 Class Third

8. Godfrey-Lee Public Schools, Wyoming 7
   Census 2245 Class Fourth

9. Godwin Hts. Public Schools, Paris 6fr
   Census 4337 Class Third

10. Grand Rapids Public Schools, Grand Rapids 1
    Census 55867 Class Second

11. Grandville Public Schools, Wyoming 1fr
    Census 5523 Class Third

12. Grattan Center School, Grattan 1fr
    Census 289 Class Fourth

13. Kelloggsville Public Schools, Wyoming 8fr
    Census 3244 Class Fourth

14. Kenowa Hills Public Schools, Walker 16fr
    Census 3904 Class Third
    (former Boyd Primary District now split between Kenowa Hills and Sparta)

15. Kent City Community Schools, Tyrone 4fr
    Census 1397 Class Fourth
    (includes former Casnovia District, Tyrone 8fr)

16. Kentwood Public Schools, Paris 12fr
    Census 6198 Class Third
    (includes former East Paris Primary, Paris 8)

17. Lowell Area Schools, Lowell 1fr
    Census 2872 Class Fourth
    (includes former Talbot, Grattan 5fr; Alton, Vergennes 1; Moseley, Vergennes 4fr; Mapes, Lowell 6)

18. Northview Public Schools, Plainfield 16fr
    Census 3555 Class Third

19. Rockford Public Schools, Algoma 1fr
    Census 3938 Class Third
    (includes former Stinson, Courtland 1)

20. Sparta Area Schools, Sparta 2fr
    Census 2997 Class Fourth

21. Wyoming Public Schools, Wyoming 11
Census 9669 Class Third

(3) That the above school districts contain the school census herein enumerated based upon the May 1966 census figures and the classification of school districts as provided by Michigan Law.

Further deponent sayeth not:

(s) Roscoe C. Miner
Superintendent of Kent Intermediate
School District

Sworn and subscribed before me
this 1st day of March, 1967

Notary Public for Kent County of Michigan
(s) Grace L. Knol
My Commission Expires: August 20, 1967.

APPENDIX I

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

I, ROSCOE C. MINER, being duly sworn, depose and say that I am the Superintendent of Kent Intermediate School District and am familiar with the school districts therein and their history and that I have final responsibility for the keeping of the records of such Intermediate School District;

That based on such knowledge and records, I hereby state that Nelson Center (Nelson No. 6) School District was annexed to Cedar Springs Public Schools and that such annexation became effective on the 8th day of November 1965 and that the canvass filed with the Kent Intermediate School office shows the vote thereon to have been 22 yes and 2 no.

(s) Roscoe C. Miner
Superintendent of Kent Intermediate School District

Subscribed and sworn to before me a Notary Public for the County of Ingham, this 1st day of March, 1967.

(s) Eunice K. Friedewald
My Commission expires Dec. 9, 1968.

(Notarial Seal)

APPENDIX J

AFFIDAVIT

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

I, BRUCE T. BLANCHARD, being duly sworn, depose and say that I am the Superintendent of Ionia Intermediate School District and am familiar with the two elections held in such district pursuant to Act 289, PA 1964 (Reorganization Act); that I have final responsibility for the keeping of the records of such intermediate school district;

That based on such knowledge and records, I hereby state:

That the plan of reorganization for Ionia Intermediate School District called for the merger of Ashley (Grattan #6 Fractional) and Grattan Center School (Grattan #1 Fractional) being two districts of the Kent Intermediate School District, with Belding Area Schools, a district in the Ionia Intermediate School District;

That at an election held June 13, 1966, the total Ionia Intermediate Reorganization Plan was rejected by a vote of 3,610 to 1,491 as shown by the canvass filed in the Ionia Intermediate School District office;

That at a second election held December 12, 1966, where voting was by proposed district, and the above described portion of the reorganization plan was proposition A, proposition A was rejected by a vote of 374 to 265, as shown by the canvass filed in the Ionia Intermediate School District office;

That Ashley (Grattan #6 Fractional) and Grattan Center School (Grattan #1 Fractional) therefore continue as school districts in the Kent Intermediate School District.

(s) Bruce T. Blanchard

Subscribed and sworn to before me
a Notary Public in and for the County of
Ingham, State of Michigan this 1st
day of March, A.D. 1967.

(s) Eunice K. Friedewald
My Commission expires Dec. 9, 1968.

(Notarial Seal)